

Message Text

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ACTION NEA-10

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 8652

INFO AMEMBASSY COLOMBO

AMEMBASSY DACCA

AMEMBASSY ISLAMABAD

AMEMBASSY KABUL

AMEMBASSY KATHMANDU

CINCPAC

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

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CINCPAC FOR POLAD

E.O. 11652: N/A

TAGS: PINT, IN

SUBJECT: MRS. GANDHI REFUSES TO TESTIFY BEFORE SHAH COMMISSION

1. IN ANOTHER CHARACTERISTICALLY TOUGH AND DEFIANT
STATEMENT MRS. GANDHI TODAY REFUSED TO TESTIFY BEFORE
THE SHAH COMMISSION OF INQUIRY ON THE GROUNDS THAT
SHE WAS NEITHER LEGALLY NOR CONSTITUTIONALLY COMPELLED
TO DO SO. JUSTICE SHAH RULED THAT HER REFUSAL CONSTITUTED
AN OFFENCE UNDER THE INDIAN PENAL CODE AND DIRECTED
THE SECRETARY OF THE COMMISSION TO FILE A CASE AGAINST
HER WITH A DISTRICT MAGISTRATE IN DELHI.

2. IN LATE 1977 MRS. GANDHI HAD DECLINED TO ATTEND

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HEARINGS OF THE SHAH COMMISSION ON PROCEDURAL GROUNDS
(SEE 77 NEW DELHI 16652). HOWEVER, WHEN THE COMMISSION
RESUMED ITS HEARINGS ON JANUARY 9, IT HAD MOVED INTO THE
SO-CALLED "SECOND PHASE" AND ISSUED A SUMMONS WHICH
COMPELLED MRS. GANDHI TO APPEAR. ON JANUARY 9 AND 10,
THE FORMER PM SAT SILENTLY IN THE CHAMBER AS HER COUNSEL
QUESTIONED THE LEGAL BASIS OF THE PROCEEDINGS. AFTER

JUSTICE SHAH REBUTTED THE PROCEDURAL ARGUMENTS, MRS. GANDHI HERSELF READ OUT A LENGTHY STATEMENT JANUARY 11 WHICH DESCRIBED THE COMMISSION AS BEING "IRRELEVANT" AND DIRECTED AGAINST HER AND HER FORMER CABINET COLLEAGUES. SHE CLAIMED THAT TO TESTIFY BEFORE THE COMMISSION WOULD VIOLATE THE OATH OF SECRECY SHE TOOK AS PRIME MINISTER. JUSTICE SHAH QUICKLY RETORTED THAT BY HER REFUSAL SHE HAD COMMITTED A PRIMA FACIE OFFENCE UNDER SECTION 179 OF THE PENAL CODE WHICH STIPULATES THAT PERSONS MUST GIVE STATEMENTS TO PUBLIC SERVANTS WHO ARE EXERCISING THEIR LEGAL DUTIES. HE ORDERED THAT SHE BE PROSECUTED BEFORE A DISTRICT MAGISTRATE IN DELHI. (NOTE: PUNISHMENT UNDER SECTION 179 CARRIES A MAXIMUM PERIOD OF DETENTION OF SIX MONTHS OR A MAXIMUM FINE OF ONE THOUSAND RUPEES OR BOTH.) MRS. GANDHI'S COUNSEL HINTED THAT SHE MAY APPEAL JUSTICE SHAH'S RULING TO THE SUPREME COURT.

3. MRS. GANDHI'S STONEWALLING POSTURE AT THE HEARINGS, WHICH REPORTEDLY INCLUDED A JUSTIFICATION OF THE DECLARATION OF THE EMERGENCY AND AN ATTACK ON THE JANATA GOVERNMENT, WAS CHARACTERISTIC OF THE COMBATIVE AND UNREPENTANT ATTITUDE SHE HAS DISPLAYED SINCE SHE BEGAN HER COMEBACK EFFORTS IN EARNEST LAST OCTOBER. IT REPRESENTS A FURTHER EFFORT ON HER PART TO POLITICIZE THE HEARINGS TO HER OWN ADVANTAGE. ACCORDING TO NEWS LIMITED OFFICIAL USE

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ACCOUNTS, JUSTICE SHAH BRIDLED AT HER PUGNACIOUS STANCE AND SAID THAT SHE HAD TURNED THE PROCEEDINGS INTO A FARCE. SHE HAS, IN ANY EVENT, ONCE AGAIN MANAGED TO AVOID BEING DRAWN INTO PUBLIC EXCHANGE ON THE SUBSTANCE OF HER

ACTIONS DURING THE EMERGENCY BY ENGAGING IN FURTHER

PROCEDURAL WRANGLINGS. LEGAL ARGUMENTS IN THE DISTRICT MAGISTRATE'S COURT OR IN THE SUPREME COURT COULD DRAG ON FOR SOME TIME GIVEN THE INDIA LEGAL SYSTEM'S MANY OPPORTUNITIES FOR DELAY AND POSTPONEMENT. GOHEEN

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